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BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of the
Residential Action Coalition

BZA Appeal Nos. 14866
Hearing Date: October 19, 1988

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DISTRICT OF COLUMBIA
OFFICE OF THE CLERK

STATEMENT IN OPPOSITION

I.
Introduction

Windem Associates, owner of the property which is the subject of this appeal, hereby opposes the appeal as set forth further below. The Residential Action Coalition, Appellant, has failed to carry its burden of proof for revocation of the valid and appropriate Certificate of Occupancy for the Embassy Inn at 1627 16th Street, N.W. The Appellant has not, and cannot, establish that there was any error in the issuance of the Certificate of Occupancy, nor that the permitted use is in any way inconsistent with a proper interpretation and application of the Zoning Regulations.

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II.
Statement of Facts

The Appellant, Residential Action Coalition, hereinafter "RAC" or "Appellant," challenges the issuance of a Certificate of Occupancy for the Embassy Inn, located at 1627 16th Street, N.W.

A. History Of Prior Use.

The Embassy Inn is a 40 room stucco building which was built in 1911. The Embassy Inn was formerly owned by the Dadian family, who also owned and operated the Windsor Inn at 1842 16th Street. The Dadians purchased the Embassy Inn in 1941, and operated it pursuant to hotel and later lodging house Certificates of Occupancy.

The Embassy Inn began operating as a short-term lodging facility in the 1920's. The records indicate that the Dadian

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family first obtained a Hotel Certificate of Occupancy in 1942 (Permit No. 74678). On April 11, 1946, another Hotel Certificate of Occupancy was issued for the Embassy (No. 102409). In 1951, a Certificate of Occupancy for a lodging house was issued (Permit No. A-11961), but the transient nature of the operation remained the same.

In approximately 1963, the Dadians could no longer operate the Embassy and Windsor Inns, and both were closed. Two of the owners, sisters of Arthur Dadian who managed the hotels, were hospitalized with serious illnesses and both eventually died of these illnesses. The third owner practiced law and could not devote his time to the structures. Although the buildings were closed, the Dadians never intended to terminate or abandon the active operation of the two buildings for daily transient occupancy. Rather, it was their intention to resume the use once the two sisters recovered from their illnesses. This is evidenced by the physical appearance of the structures including the retention of the furniture, linens and towels. Photographs taken by the present owner in 1985 show all the accoutrements of an inn. Mr. Dadian also indicated to the present owners in 1985 that he always intended to resume the lodging house operation. Arthur Dadian sold the two buildings to the present owners in July of 1985.

B. Present Use Of The Property.

The present owner, Windem Associates (Intervenor herein) purchased the Inn in 1985, at a cost of \$669,412. Subsequently, the Inn was completely renovated and restored at a cost to the present owner of \$1,030,443.

Prior to purchasing the Embassy Inn, the present owner initiated a series of steps to ensure that the long-standing lodging house operation of the Embassy Inn could continue as a permitted nonconforming use in the R-5-C zone.

In a series of discussions with the previous Zoning Administrator, James J. Fahey, it was determined that the definition of "Inn" under the current Zoning Regulations was nearest to the earlier term "lodging house". Mr. Fahey also confirmed that the Certificate of Occupancy could be issued for the Embassy Inn based on the previous operation of the hotel/lodging house since the 1940's.

Based upon this information, the building was purchased at a cost of \$669,412. The owners then commenced a total rehabilitation of the building during 1985-1987, pursuant to validly issued building permits. The total cost of the renovation was \$1,030,443. After all renovation work was completed, the Certificate of Occupancy for the Embassy Inn was issued on June 26, 1987.

C. Challenge By RAC.

On June 2, 1988, almost 3 years after the Zoning Administrator confirmed the validity of the "Inn" use for the property, RAC filed this appeal challenging the June, 1987 issuance of the Inn Certificate of Occupancy for the Embassy Inn. RAC asserts that the tax records listed the property as Class II, and that the Lusk Directory listed a series of classifications for the site. Based upon these classifications, RAC argues the "discontinuance" provision (Section 2005.1) would bar the continuation of the transient use. Last, RAC challenges the Inn's compliance with the parking requirements of the Zoning Regulations.

In support of the allegation of a discontinuance, RAC offers the application for Certificate of Occupancy filed by the present owner which states, erroneously, that the prior use was "apartment house". As the Zoning Division's records indicate, this was simply a mistake. The Zoning Administrator had previously confirmed the prior use by that time.

RAC also contends that the tax forms filed by Arthur Dadian, the previous owner, which indicate a "Class II" status, are evidence of a discontinuance of the nonconforming use. An examination of the law clearly demonstrates that a 40 rooming unit building, by whatever name it is called, cannot qualify for a tax status which applies to buildings with no more than 5 units. See D.C. Code Section 47-813(b)(2). Intervenor's position is that the erroneous tax filing of the previous owner, without any substantive or probative evidence for support, has no effect on the zoning status of the property.

RAC also states that the 3 year discontinuance provision of 11 DCMR 2005.1 should apply to establish prima facie evidence of no intention to resume active operation as a nonconforming use. However, the 3 year period did not expire until 3 years from the effective date of the Section 2005.1, which was in August, 1983. The first Building Permit for renovation was issued on July 11, 1985 (Permit No. B308809), and thus the 3 year provision does not apply.

RAC is also of the position that, due to the alleged change in zoning status, a new parking requirement is therefore imposed. The building is a contributing building to the character of the 16th Street Historic District, and therefore would be entitled to parking and loading waivers. (See Sections 2100.5 and 2200.5). As such, if there were a change in use, no parking would be required due to the provisions of Section 2100.5. Notwithstanding this provision, the parking and loading credits from the prior lodging house use, when applied to the requirements under the current Zoning Regulations, would result in no parking or loading requirement. In this case, because there has been no change in use, no additional parking spaces are required.

III.
Argument

A. The Embassy Inn Has A Valid And Appropriate
Certificate Of Occupancy.

1. The Embassy Meets The Definition Of An Inn.

The Embassy Inn is a 40 room establishment which provides lodging on a daily basis. There are no kitchens in the rooms and no central dining area. A continental breakfast is served in the Inn. There are no commercial adjuncts, function rooms or exhibit space. The Inn meets the definition of the Zoning Regulations, Section 199.

2. The History Of Prior Transient Use Demonstrates
That An Inn Is Appropriate.

The definition of inns was first added to the Zoning Regulations in 1980 pursuant to the Zoning Commission decision in the Hotel case. The Zoning Commission Order states that inns are "essentially a residential type facility" (and "generally not obtrusive to their neighbors" (Order No. 314 at pp. 15, 16)).

Prior to the inclusion of inns in the Zoning Regulations, the closest approximation of this type of use was lodging houses, which were defined in conjunction with rooming houses as "a dwelling providing for compensation lodging for three or more roomers." The Zoning Regulations were amended in 1958 and the term lodging house was deleted. No explanation of this change was given in the legislative history of the 1958 amendments.

Prior to 1985, the Embassy Inn (formerly the "Hotel Embassy") had a Certificate of Occupancy as a lodging house, which was issued on July 16, 1951 (No. A11961). Prior to 1951, the Certificate of Occupancy was for a "hotel", which was issued on April 11, 1946. Prior to 1946, the Certificate of Occupancy (No. 74678) was also for a hotel, first issued to the Dadians on May 27, 1942. From approximately 1942 to July, 1985, the Hotel Embassy

(together with the Hotel Windsor at 1842 16th Street) was owned and managed by the Arthur Dadian family.

In approximately 1963, the Dadians could no longer operate the Windsor and Embassy and they were closed. Two of the owners, sisters of Arthur Dadian who managed the hotels, were hospitalized with serious illnesses and both eventually died of these illnesses. The third owner practiced law and could not devote his time to the structures. Although the building was closed, the Dadians never intended to terminate or abandon the active operation of the building for daily transient occupancy. Rather, it was their intention to resume the use once the two sisters recovered from their illnesses. This is evidenced by the physical appearance of the structure including the retention of the furniture, linens and towels. Photographs taken by the present owner in 1985 show all the accoutrements of an inn. Mr. Dadian also indicated to the present owner in 1985 that he always intended to resume the lodging house operation. Arthur Dadian sold the building to the present owners in July 1985.

3. The Allegation Of A Discontinuance Is Unfounded.

RAC contends that because the non-conforming use was interrupted by the period of time that the Embassy Inn was not actively engaged in providing lodging, the alleged discontinuance as a nonconforming use precludes the continuation of the inn use. RAC cites Section 2005.1 of the Zoning Regulations, which became effective August 5, 1983, which states that a discontinuance for a period of 3 years shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. These allegations are unfounded.

RAC offers two bases in support of these allegations. First, RAC offers the statement of the owner on the Certificate of Occupancy application that the prior use was "apartment house", which would indicate a discontinuance of the nonconforming use.

Second, RAC submits that the tax category changed from "Code 37" to "Code 11".

a. There Is No Substantial Evidence Of An Intervening Use.

RAC offers the statement of the Applicant for the Certificate of Occupancy to the effect that the prior use of the Embassy Inn was "apartment house". The records contained in the Zoning Administrator's office indicate that the prior use has been as follows:

- 1942 - Hotel (No. 74678)
- 1946 - Hotel (No. 102409)
- 1951 - Lodging House (No. A11961)
- 1985 - Inn (No. B15027)

The application for the most recent Certificate of Occupancy was completed and filed by a representative of Roundel Corporation, which company was contracted to do the renovation of the Embassy Inn. The careless misstatement of an employee of the architects notwithstanding, the records of the City establish a long-standing nonconforming use. The prior use was confirmed by the Zoning Administrator prior to the time of the Certificate of Occupancy application.

RAC further contends that the discontinuance provision of Section 2005.1 should operate to establish a case of an intention to not continue a nonconforming use. Section 2005.1 states that a discontinuance of use for 3 years established a prima facie case of an intention to not resume a nonconforming use. Section 2005.1 was added to the Zoning Regulations effective on August 5, 1983 to be applied prospectively. In July, 1985, over one year prior to the expiration of the 3 year period of Section 2005.1, a building permit was issued for the Inn. The issuance of the permit tolls the 3 year period, and therefore, the discontinuance provision does not apply.

b. The Tax Status Of The Prior Owner Has No Bearing On This Zoning Issue.

With regard to the allegations of the taxes, we submit that the type of real estate taxes paid by the previous owner should in no way be attributed to the present owners. As in the case of the Windsor Inn (BZA Appeal Nos. 14865A and B), the tax category and/or homestead exemption is not relevant to the zoning analysis.

Furthermore, under the definition of the D.C. Code at Section 47-813(b)(2), Class 2 property is defined as follows:

- i. Is not occupied by the owner thereof;
- ii. Contains not more than 5 dwelling units ...; and
- iii. Is used exclusively for nontransient residential dwelling purposes. (Emphasis added).

The Embassy Inn is a 40 room establishment, and therefore could not by operation of law meet the definition of a Class 2 property as has been alleged.

If the Dadian family attempted to reduce its tax liability through whatever means, this has no affect whatsoever on the present owners. If there is an issue as to the previous owner's tax liability, the proper remedy should not be against the present owner, and in any event should be elsewhere than in a zoning forum.

4. The Applicable Parking Requirements Have Been Met.

RAC also contends that the parking is not in compliance with the Zoning Regulations. The Embassy Inn is not required to provide parking pursuant to Section 2000.4 of the Zoning Regulations, which provides that non-conforming uses lawfully existing on May 12, 1958 may be continued. Because there was no change in use, there was simply no increased parking requirement. The same is true for the loading requirement.

Even if there were a parking requirement, then the Inn could be exempted from the parking requirements. The owners are eligible to obtain a waiver as provided by Section 2100.5 of the Zoning Regulations, which exempts buildings in historic districts which are certified as contributing to the character of the historic district. A similar waiver is found in Section 2200.5 of the zoning provisions.

IV.
Conclusion

For the foregoing reasons, the property owner herein respectfully request that the appeal be denied with prejudice.

Respectfully submitted,

WILKES, ARTIS, HEDRICK & LANE,
CHARTERED

By Christopher H. Collins/elal
Christopher H. Collins

Edward L. Donohue
Edward L. Donohue

1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 457-7800

Attorneys for
Windem Associates